

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

ROBERT TAYLOR GOULD

Claimant

V.

WRIGHT TREE SERVICE, INC.

Respondent

AND

CANNON COCHRAN MANAGEMENT

Insurance Carrier

Docket No. 1,068,630

ORDER

This matter comes before the Board on Respondent's Notice of Bond and Request for Approval filed on March 1, 2016. P. Kelly Donley and Travis L. Cook of Wichita, Kansas, appeared for respondent and its insurance carrier (respondent). John G. O'Connor appeared for Claimant. Respondent's request is made pursuant to K.S.A. 44-530.

K.S.A. 44-530 (amended 1990) states:

In any proceedings upon the application of a workman for judgment against workman's employer upon an award hereinbefore provided and before judgment has been granted, the employer may stay proceedings upon such application by filing with the clerk of the district court a bond to be approved by the judge of the district court undertaking to secure the payment of the compensation as in such award provided, or by filing with such clerk a certificate of a licensed or authorized insurance company or reciprocal or interinsurance exchange or association that the amount of compensation to the workman is insured by it.

K.S.A. 44-530 allows respondent to stay proceedings by filing an application with the clerk of the District Court. The Workers Compensation Appeals Board is not the District Court. In *Rogers v. ALT-A & M JV LLC*,¹ the Court of Appeals wrote:

Rogers moved for attorney fees on appeal pursuant to Kansas Supreme Court Rule 7.07(b) (2015 Kan. Ct. R. Annot. 72) and K.S.A. 2014 Supp. 44-536(g). Kansas

¹ *Rogers v. ALT-A & M JV LLC*, ___Kan.App.2d___, 364 P.3d 1206 (2015).

Supreme Court Rule 7.07(b)(1) (2015 Kan. Ct. R. Annot. 72) states: “An appellate court may award attorney fees for services on appeal in a case in which the district court had authority to award attorney fees.” Further, “a Kansas court may not award attorney fees unless a statute authorizes the award or there is an agreement between the parties allowing attorney fees.” *Snider v. American Family Mut. Ins. Co.*, 297 Kan. 157, 162, 298 P.3d 1120 (2013). Since K.S.A. 2014 Supp. 44–536(g) authorizes the director of workers compensation to award attorney fees when an attorney renders services subsequent to the ultimate disposition of the claim, Rogers argues appellate courts may award attorney fees for services on appeal.

Kansas Supreme Court Rule 7.07(b) (2015 Kan. Ct. R. Annot. 72), controls an appellate court's award of attorney fees. Interpretation of a Supreme Court rule is a question of law subject to unlimited review. *Snider*, 297 Kan. at 162, 298 P.3d 1120. The principles of statutory construction also apply to construction of Supreme Court rules. *Kansas Judicial Review v. Stout*, 287 Kan. 450, 460, 196 P.3d 1162 (2008). If the language of a Supreme Court rule is clear, courts are bound by the rule's language. *Stout*, 287 Kan. at 460, 196 P.3d 1162. If the rule is subject to more than one reasonable interpretation, the Supreme Court may “authoritatively state which interpretation is most consistent with our intent in adopting the rule in question.” *Stout*, 287 Kan. at 460–61, 196 P.3d 1162. Here, the rule's language is clear. Attorney fees are allowed on appeal if the district court could award attorney fees. Workers compensation cases are not heard by the district court. As a result, the district court cannot award attorney fees in workers compensation cases and appellate courts may not award attorney fees for services on appeal.

The plain language of K.S.A. 44-530 confers jurisdiction on the District Court, not the Board. Respondent's request for approval of a stay is denied for lack of jurisdiction.

IT IS SO ORDERED.

Dated this _____ day of March, 2016.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Hon. Steven J. Howard, Administrative Law Judge